

2017 HOUSE JUDICIARY

HB 1270

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1270
1/24/2017
27297

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to aggravating factors in drug offenses; and to provide a penalty.

Minutes:

1

Chairman K. Koppelman: Opened the hearing on HB 1270.

Rep. C. Olson: Introduced the bill. (see bill 1269 testimony) (#1) This is another bill relating to some of the forms changes we should make to the code. This bill changes the aggravating conditions for possession of crack cocaine to be equal to that of the amount required for regular cocaine before it becomes a disposition to an offense from a Class A to a AA felony. (1:34) Discussed the history on this bill and the racial disparity on this. We want to be smart on crime and sentencing. I am thinking it would be wise to amend this number from 50 down to 28 grams as a suggestion. That is the number to which Congress adjusted their mandatory minimum sentencing threshold in Congress.

Chairman K. Koppelman: I don't know the difference between crack cocaine and crack?

Rep. C. Olson: It does increase the potency. It is finding the right number for grams.

Chairman K. Koppelman: Are there a lot of people in prisons for this kind of a charge?

Rep. C. Olson: He did indicate the issue had come up. I am not sure to what level it exists.

Representative Jones: In your testimony the last line says this has been a subject of national debate and several states have already adjusted their laws in this manner. Now this is discussing the 50 grams. Which amount is being used in most other states?

Rep. C. Olson: I am not sure what is being used in other states. I am suggesting the 28 gram since it is in the federal standards.

Representative Paur: What are the federal standards for regular cocaine?

Rep. C. Olson: I believe it is 500 grams. So they were much higher.

Opposition: None

Neutral: None

Hearing closed

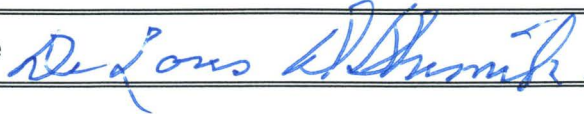
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB1270
2/6/2017
27950

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to aggravating factors in drug offenses; and to provide a penalty.

Minutes:

Chairman K. Koppelman: Opened the meeting on HB 1270.

Representative Klemin: It should be 28 grams like the federal law is. 28 grams equals one ounce. Rep. Olson recommended that amendment to the bill.

Motion Made to amend the bill on page 1, line 7, we overstrike 50 and replace it with 28 by Representative Paur: Seconded by Representative Maragos:

Discussion:

Voice vote carried.

Do Pass As Amended by Representative Vetter: Seconded by Representative Simons:

Discussion:

Rolla Call Vote: 14 Yes 0 No 1 Absent Carrier: Representative Paur

Closed.

17.0634.01001
Title.02000

Adopted by the Judiciary Committee

February 6, 2017

2/6/17 JF

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1270

Page 1, line 7, replace "Fifty" with "Twenty-eight"

Renumber accordingly

Date: 2-6-17
 Roll Call Vote 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO 1270**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: pg 17, Overstrike 50 to 28

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep Paur Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____
 Absent _____
 Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-6-17
Roll Call Vote 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 1270

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0634.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider

Motion Made By Rep. Vetter Seconded By Rep. Simon

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment : Rep. Paur

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1270: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1270 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "Fifty" with "Twenty-eight"

Renumber accordingly

2017 SENATE JUDICIARY

HB 1270

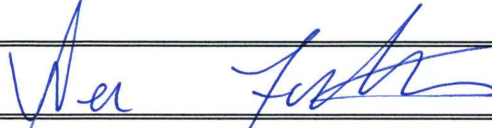
2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1270
3/6/2017
28748

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to aggravating factors in drug offenses; and to provide a penalty.

Minutes: No written testimony.

Chairman Armstrong called the committee to order on HB 1270. All committee members were present.

Christopher Olson, North Dakota State Representative District 13, introduced and testified in support of the bill. No written testimony.

"This bill changes the amount of crack-cocaine needed to enhance the charge of a Class A Felony to a Class AA Felony. It increases it from five grams to 28 grams. This would match it with the current Federal regulations."

Chairman Armstrong: "I think this is overdue and the I think the reason it hasn't been done before is because there aren't many crack-cocaine charges in North Dakota."

Senator Nelson: "What's the difference between crack-cocaine and regular cocaine?"

Representative Olson: "It can be mixed easier and it's more powerful, I know that. The big difference I am not aware. I just know the Feds think this change of amount of grams for an enhancement is right so that's what we want to do."

Chairman Armstrong: "This is a bipartisan issue that has been going on for over 40 years, the war on drugs that is. The short version is that crack-cocaine is a freebase version of regular cocaine. It's more often smoked and it gives a much stronger but shorter high."

Senator Nelson: "What are we enhancing?"

Representative Olson: "The enhancement is the felony that is being enhanced, not the drug."

Chairman Armstrong closed the hearing on HB 1270.

Senator Myrdal motioned for a Do Pass. **Senator Larson** seconded.

Discussion followed:

Chairman Armstrong: "At the end of the day what this does is gets us in line with the Federal guidelines. If anyone thinks the Federal guidelines are soft on drug crimes, well, they are horribly mistaken."

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Chairman Armstrong carried the bill.

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1270**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Senator Myrdal Seconded By Senator Larson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Armstrong

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1270, as engrossed: Judiciary Committee (Sen. Armstrong, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1270 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

HB 1270

#1
1270
1-24-17

Testimony to House Judiciary Committee relative to HB 1269 and 1270.

My name is Gary Euren. I recently retired from the Cass County State's Attorney Office after eleven years. During that time my primary work concentration was drug crimes. I also was the State's Attorney representative on the Adult drug court.

For approximately 1 ½ years I was the designated methamphetamine attorney under a DOJ grant for special enforcement of methamphetamine policing and prosecuting. I have attended numerous seminars and workshops regarding drug enforcement and prosecution and have provided drug training to law enforcement and prosecutors.

Prior to working at the Cass County State's Attorney Office, I was a part time municipal prosecutor in Grand Forks for fourteen years. My primary work concentration was DUI prosecution. During the first eight years of practice, my primary concentration was criminal defense including as a public defender. Finally, I have taught criminal law classes for the Criminal Justice program at the University of North Dakota (3 years) and this semester is 5 of 6 years for the Paralegal program at Minnesota State University Moorhead.

I had proposed several changes to the North Dakota Century Code regarding drug violations to Representative Chris Olson and Senator Judy Lee. Some of those proposed changes are incorporated in HB 1269 and HB 1270. My comments herein are a result of my experience and the recent national and state discussion regarding reducing prison populations. It is my belief that these proposed changes will help reduce the North Dakota State Penitentiary population, provide prosecutors with more discretion in charging and sentencing recommendations, and provide judges with more discretion in sentencing. I also believe these changes will give more perceived and actual fairness and justice to the criminal justice system.

There are three basic proposed changes in this bill.

The first allows for what is called a misdemeanor by disposition in sentencing in certain situations which currently prohibit such a sentence. A misdemeanor by disposition involves:

1. A plea of guilty to or conviction for a felony;
2. A sentence that is one year or less; and
3. Successful completion of supervised probation;
4. Which will result in a permanent record of a misdemeanor instead of a felony.

For example – a sentence of one year, first to serve 90 days, two years supervised probation. If the defendant serves the jail time, pays all fines and fees, complies with all terms of probation, and is deemed to have successfully completed probation, the BCI will change the permanent criminal record to conviction of a misdemeanor, rather than a felony. This can be of great benefit to persons convicted of felonies because it is very difficult to obtain employment and housing with a felony conviction. This benefit is normally only recommended by prosecutors and granted by judges when the defendant has no or a very minor criminal record and is not a major drug dealer. At the present time, the only options available to prosecutors and judges are reduction of the charge to simple possession (to be able to take advantage of the misdemeanor by disposition), a deferred imposition of sentence (which becomes a dismissal of the charges if the sentence is successfully completed), continuing with the felony sentencing, or outright dismissal.

Currently, this benefit in sentencing is not available for a person convicted of delivering, manufacturing, or possessing with intent to deliver or manufacture any controlled substance. This bill, in its present state, allows for this benefit only for delivery of Schedule IV controlled substances. My initial recommendation was to apply this benefit to the delivery, manufacture, or possession with intent to deliver or manufacture all controlled substances. I still believe that it should apply to all scheduled controlled substances because: the vast majority of convictions in this category are Schedule I, II, and III controlled substances and in many cases these convictions are of persons

#1
who are minor drug dealers, and/or have less significant criminal records. Not allowing the use of this tool for these convictions will result in little change to the prison population in North Dakota nor will it provide more fairness in sentencing and the way sentencing is perceived. Prosecutors and judges will not be compelled to use this tool but will have another option when deciding how to sentence and may be helpful in resolving more cases without trial and/or getting useful information to convict major drug dealers.

The second change involves lowering the mandatory, minimum sentences for charges of delivery, manufacturing, or possession with intent to deliver or manufacturing controlled substances with prior drug convictions. At the present time the statutes provide that the mandatory minimum with two or more prior convictions will result in a sentence that is also the maximum penalty available. The length of such sentences vary with the schedule of the controlled substance involved, resulting in three changes to the statute.

One benefit of this change will be more discretion to the prosecutors and judges. At the present time, if a prosecutor charges for delivery, manufacturing, or possession with intent to deliver or manufacture with two or more prior convictions, there are no options for sentencing except the mandatory/minimum (maximum) or amending the charging document to allege one or no prior convictions. Often minor drug dealers have prior convictions for simple possession of controlled substances but not for delivery, etc. They do, however, often have information that will help convict major drug dealers. In order to get cooperation, the prosecutor may need to amend out one or more prior conviction. With this provision, the prosecutor can recommend the maximum, but offer a lesser recommendation for the cooperation without having to amend the charging document. Thus another benefit is that charging and sentencing in these cases will be more transparent and honest.

The third change involves removing prior misdemeanor convictions for use in enhancing a sentence. This provision is important for transparency, honesty and fairness in the criminal justice system. At the present time, a charge of delivery,

manufacturing, or possession with intent to deliver or manufacture can have a mandatory, minimum sentence that is also the maximum possible sentence if there are two prior convictions for B misdemeanor possession of marijuana. This is patently unfair and can cause cynicism and distrust of the criminal justice system.

#1

HB 1270

This bill will adjust an inequity in the enhancement provisions.

It addresses the issue that it takes fifty grams of cocaine base to enhance an A felony to a AA felony while it only takes five grams of crack cocaine to enhance. This change will increase the amount needed for enhancement of crack cocaine to the fifty grams that is necessary with cocaine base. There is a racial aspect to the disparity this causes in sentencing because it is a drug primarily used and delivered by blacks. This has been the subject of a national debate and several states have already adjusted their laws in this manner.

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